

**PLANNING AND ZONING COMMISSION
MINUTES
SPECIAL MEETING
JANUARY 29, 2015**

Place: Room 119, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Cameron, DiDonna, Olvany, Voigt, Sini, Jr.

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat
Channel 79

Chairman Cameron opened the meeting at 8 P.M. and read the first agenda item:

PUBLIC HEARING

Land Filling & Regrading Application #343, David & Carlyle Upson, 25 Peterick Lane. Proposing to fill and regrade the side yard of the property and install stormwater management in association with the construction of an addition to the existing single-family residence, and to perform related site development activities. The property is situated on the north side of Peterick Lane approximately 700 feet north of its intersection with Middlesex Road and is shown on Assessor's Map #9 as Lot #7, and is located in an R-1/2 Zone. *TO BE OPENED AND IMMEDIATELY CONTINUED TO FEBRUARY 24, 2015.*

Chairman Cameron announced that the application had been withdrawn. She then read the following agenda item:

Special Permit Application #284/Site Plan, Celco Partnership d/b/a Verizon Wireless, 1926 Boston Post Road. Proposing to install two panel-type antennas inside the existing cupola on the roof of the Darien Book Aid building, and to perform related site development activities. The subject property is located on the south side of Boston Post Road approximately 150 feet west of its intersection with Ring's End Road, and is shown on Assessor's Map #51 as Lot #38, NB Zone.

Attorney Ken Baldwin of Robinson & Cole explained that the proposal is to install two telecommunications antennas in the cupola atop the Darien Book Aid site at 1926 Boston Post Road. One antenna will face to the west and one will face to the east so that coverage along the Boston Post Road corridor will be improved. Attorney Baldwin said that the plans have been revised to incorporate the recommendation of the Architectural Review Board to include a louver design. In response to questions, he said that the two antennas will increase the capacity in the local area and that these are smaller, lower power antennas than what might be located on top of a very tall pole. He said that there will be no generator, but there will be a small battery back-up for power supply.

Mr. Olvany asked if the purpose of the additional antenna was to provide primarily data. Mr. Baldwin responded that it is.

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There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Olvany, seconded by Mr. Voigt and unanimously approved.

Chairman Cameron read the following agenda item:

Business Site Plan #122-A/Special Permit, TG Diners, LLC, d/b/a Darien Diner, 275 Boston Post Road. Proposal to construct additions and alterations to the former Friendly's restaurant; to establish Darien Diner; and to perform related site development activities. The subject property is located on the north side of Boston Post Road approximately 250 feet east of its intersection with Birch Road, and is shown on Assessor's Map #13 as Lot #3 in the SB-E and R-1/2 Zones.

Attorney Wilder Gleason represented the applicant and explained that variances had been obtained from the Zoning Board of Appeals and that the Architectural Review Board had approved the design of the structure subject to some stipulations and modifications. He said that those changes have been incorporated into the plans. He said that the property along the Boston Post Road is in the Service Business Zone for the first 150 feet of the depth of the property and then it becomes a Residential Zone. All of the commercial activity will be located on the commercially zoned portion of the property. Friendly's Restaurant had previously occupied the site. Proposed changes include adding a vestibule to the front center of the building and adding two small additions to the sides of the front wall. In addition, an 8' x 26' storage space is being added to the rear of the building. Attorney Gleason said that the current plan site plan contains 15 extra parking spaces above and beyond what is the minimum requirement of the Zoning Regulations. He said that the Darien Diner is presently located at 171 Boston Post Road. The relocation of the Darien Diner to this location will result in approximately two times the floor area and approximately three times the number of on-site parking spaces. He said that this will help to meet the peak demands created by customers of the Diner. The existing parking lot is accessed via a one-way driveway system that enters the site on the east and exits the site on the west side of the building. Attorney Gleason said that new signage will be installed to make sure that customers continue to use this one-way driveway system. He said that because this site has been used as a restaurant for many years, the requirement for a formal Traffic Study had been waived.

Attorney Gleason said that part of the project will involve relocating the trash dumpster and replacing the old light fixtures in the parking lot.

In response to questions, Ted Giapoutzis said that the Diner will be open from 6:00 A.M. to 10:00 P.M. and that he will arrange to have deliveries conducted between 7:00 A.M. and 11:00 A.M. or 2:00 P.M. to 5:00 P.M. They will not be having tractor trailers deliver any supplies. They will make sure that smaller, more manageable trucks make the deliveries. Delivery trucks will not park on the Boston Post Road, but will park on the rear portion of the existing parking lot.

Mr. Voigt questioned the use of the two-foot overhang of parking spaces into the landscape areas. It was noted that the two-foot parking overhang can project over an additional landscape area, but cannot project into a required landscape buffer area or over a walkway.

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In response to questions, Ted Giapoutzis said that the Architectural Review Board required that the exterior lighting strips be removed and that the amount of exterior stucco be minimized and replaced with a flat mat finished metal material. Also, stainless steel with matte finish will be used on the gables instead of the old clapboard. In response to another question, he said that he leases the Darien Diner site at 171 Boston Post Road, now and he will conclude that lease when he relocates to this new site at 275 Boston Post Road. He said he does not know what will become of the old Darien Diner site, but he has heard rumors that it will become an Asian or Chinese restaurant.

Mr. Ginsberg said that the Health Code requires the installation of an oil/grease separator and the Police Department is requiring replacement of the signage in the parking lot.

Attorney Wilder Gleason said that if the Building Official requires the installation of additional handicapped parking spaces, this might reduce the total number of on-site parking spaces, but since they have more spaces than required, he said that he does not think that this will be a problem.

There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Voigt, seconded by Mr. DiDonna and unanimously approved.

Chairman Cameron read the following agenda item:

Continuation of Public Hearing regarding Land Filling & Regrading Application #338, ETG Properties, LLC, 5 Top O'Hill Road. Proposing to fill and regrade the south side of the property to create a more level yard area, and to perform related site development activities. The subject property is located on the west side of Top O Hill Road approximately 300 feet north of its intersection with Christie Hill Road, and is shown on Assessor's Map #29 as Lot #84 in the R-1 Zone. *DEADLINE TO CLOSE PUBLIC HEARING IS 1/29/2015 UNLESS EXTENSION OF TIME IS GRANTED BY APPLICANT.*

Chairman Cameron announced that the Commission will come back to this matter. She then read the following agenda item:

Coastal Site Plan Review #303, Land Filling & Regrading Application #339, Thomas & Sophie Murphy, 68 Salem Straits. Proposal to: construct a new pool house with terrace; construct gravel access driveway off of Peabody Lane; install associated stormwater management; and to perform related site development activities within a regulated area. The subject property is located on the north side of Salem Straits approximately 425 feet northeast of its intersection with Candlewood Lane, and is shown on Assessor's Map #62 as Lot #61 & #66 in the R-1 Zone.

Paulo Vicente, Architect, explained that the purpose of the project is to construct a new pool house building on the property. In order to accommodate this, they will need to remove an existing storage shed and an existing tree house. He said that the property is an irregular shaped lot that was actually created by merging two smaller parcels together. He said that the map shows the setback lines and noted that the proposed pool house is on a ledge to the east of the existing swimming pool. The ridge line of the structure will run from east to west so that the south plane of the roof will be

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good for the installation of solar panels. He said that the pool house structure will be accessed via a portion of Peabody Lane. This would be much easier than trying to deal with the existing retaining walls and the existing driveway farther to the south. He said that they will only need to remove one significant tree for the access drive and several other trees for the pool house. He displayed photographs of the existing site conditions. Mr. Vicente said that he understands that rock removal will be an issue. They plan rock chipping or hoe ramming rather than blasting.

Mrs. Cameron asked how long the rock chipping is expected to occur. Mr. Vicente said that the design of the foundation is a slab on grade with no crawl space and they are planning to pin the footings to the existing ledge wherever possible. He said that the grading plan is minimal and they only expect to remove two cubic yards of fill for the accessway and 7 cubic yards of fill of material for the rain garden. Some additional regrading will be needed to access the area from the pool to the pool house. In response to questions, Mr. Vicente said that the pool house structure will be approximately 15 feet tall to the eaves and approximately 22 feet tall to the ridge. The cupola will extend above the ridge line. He also said that the roof drainage will be directed into cisterns on the site so that his client can use the water in the garden area. There is an overflow from the cisterns that will allow excess water to flow into a catch basin near the street.

In response to questions, Mr. Vicente said that there is no existing curb cut from Peabody Lane into the site. He said that the access driveway from Peabody Lane to the proposed pool house will be permanent and will be used primarily for maintenance purposes.

Mr. DiDonna asked about the existing driveway from Salem Straits and the basketball court in the vicinity of the garage area. He was told that they will remain in place.

Mr. Olvany noted that the pool house is on a much higher elevation than the main house. Mr. Vicente confirmed that. He also said that the drainage to be collected from the access driveway will be directed into the rain garden area. Mr. Vicente noted that a Coastal Area Management Impact Report had been submitted and it concludes that there no impacts to coastal resources.

Mr. Ginsberg said that the application materials were referred to the Connecticut Department of Energy and Environmental Protection and on January 5, 2015, they responded with an email. He read the email indicating that DEEP found no inconsistencies between the plan and the Coastal Regulations.

Mr. Vicente said that they will be connecting the pool house structure to the sanitary sewer in Peabody Lane. Mr. Ginsberg said that the Public Works Department had commented regarding the application and that the applicant has responded to those comments.

Mr. Sini questioned the access from the pool house down to the swimming pool. Mr. Vicente noted that the pool house is designed at Elevation 49 and the pool is located on the low portion of the property at Elevation 40. New stairs will be created to make easy access from the pool house to the pool.

Hoe ramming and the removal of rock in the area was discussed. Jim Morris of Hoyt Contracting in Greenwich said that approximately 1,000 square feet, about three feet in depth, will be excavated.

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He assumes that some of this area is loose rock and will be able to be ripped from the site with large machines. He expected the hoe ramming to take about a week.

Cory Fogg, General Contractor for the project, said that he received several estimates and wanted to clarify that the hoe ramming for the building will take about a week and the hoe ramming for the sanitary sewer line will take another week. He said that at the most, it would be three weeks of hoe ramming necessary. In response to questions, he said that the hoe ramming would only take place from 8:00 A.M. until 3:00 P.M. and that it was expected it would be a maximum of 12 days of hoe ramming that would be needed.

Jim Morris said that on a site of this nature, it is not practical to drill and blast for only three feet of excavation. A question was asked by the Commission if the owners of the property will be there when the hoe ramming takes place. The answer was "yes." Mr. Morris said that most of the rock that will be chipped on-site will be removed from the site. This will involve approximately 8 to 12 truckloads for the pool house and approximately 2 to 4 truckloads for the sanitary sewer line. Some of the material excavated will be returned to the sewer line trench. Mr. Morris said in the northwest corner, the maximum depth that they will need to excavate will be about 5 feet for the sanitary sewer.

Mr. Vicente said that there are lots of rock outcrops in the area and there has been, and will continue to be, lots of construction in the area.

Mr. Murphy spoke and said that he had heard from four of the nearby property owners. Several were concerned about screening and landscaping and he has resolved all those issues with the neighbors. He said that two of the neighbors wished him good luck on the project.

Attorney Wilder Gleason said that there has been no objection from the Darrahs who did a lot of work on their property recently. He said that they just want some supplemental landscaping to soften the view from their driveway area toward the pool house. He said that the Murphys have agreed to fill in the gap between the rain garden and the area to the north of them.

Mr. Vicente said that the revised Landscaping Plan revises the location of the rain garden and notes the continuation of arborvitae.

There were no other comments from the public regarding the application.

The following motion was made: that the Commission close the public hearing and will render a decision on this matter at a future meeting. The motion was made by Mr. Sini, seconded by Mr. Olvany and unanimously approved.

Chairman Cameron read the following agenda item:

Continuation of Public Hearing regarding Land Filling & Regrading Application #338, ETG Properties, LLC, 5 Top O'Hill Road. Proposing to fill and regrade the south side of the property to create a more level yard area, and to perform related site development activities. The subject property is located on the west side of Top O Hill Road approximately 300 feet north of its intersection with Christie Hill Road, and is shown on Assessor's Map #29 as Lot #84 in the R-1

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Zone. DEADLINE TO CLOSE PUBLIC HEARING IS 1/29/2015 UNLESS EXTENSION OF TIME IS GRANTED BY APPLICANT.

Richard Bennett represented the applicant and noted that there had been a submittal from Attorney Maslan who represents a neighboring property owner. He said that he had submitted his report about a week ago to the Town and to Attorney Maslan and he had not had an opportunity to review the response and/or report dated January 29th. Mr. Bennett said this is the third hearing regarding the proposed regrading and that the house is already under construction. Additional regrading is proposed on the south side of the house to make a flat lawn area. That flat lawn area will need approximately three feet of fill and will be retained by a three foot high retaining wall. The area below the wall will be restored to a natural like condition. He submitted details of the retaining wall in photographic and illustrative form. He said that the Commission was concerned about a detailed Landscaping Plan which had been submitted.

Mr. Bennett said that he reviewed the drainage calculations and has revised the drainage calculations to account for a "fresh meadow approach" which does not give any engineering credit for the old house or driveway or other impervious surfaces. Mr. Bennett said that additional galleries have been added on the plan to the south lawn area and some of the storm water runoff from the front portion of the roof will be directed to that area. He said that they have done this even though it is not required by the Regulations. He said the trees should not be planted over the galleries so that the galleries may continue to function properly. Mr. Bennett said that the galleries have been installed to the west of the existing driveway and they were moved a little bit farther to the west from the driveway than the initial design. This was to allow for new trees to be planted near the edge of the driveway.

Renato Gasparian, the builder, said that the owner agreed to have new, large trees planted on the west side of the driveway and house to provide additional screening for the neighbors.

Mr. Bennett said that the contractor has more recently maintained the sediment and erosion controls on the site because there had been a breach that was corrected. In response to questions, he said that he has not designed any collection of the storm water runoff from the patios. It was suggested that collecting runoff water from the patios on the west side of the house and directing it into the galleries to the south of the house would tend to minimize the concentration of the water on the northwest corner of the property. Mr. Bennett said that in order to maintain no increase in the peak runoff, it is not necessary to collect all the water from all the impervious surfaces.

Commission members indicated that there is a great concern about where the storm water runoff from all of the impervious surfaces will go and to make sure that it is properly directed to avoid any impact to neighbors. Mr. Gasparian said that runoff water from the patio will go over the edge and then downhill to the west toward the neighbor. No drain has been required in the patio area. Mr. Olvany asked if it was possible to collect the water from the patios and to direct it into the drainage system to the south of the house.

Mr. Gasparian noted that the patio is only about 500 square feet in area and that it would be very difficult to put a drain in that area because it would freeze in the winter and water would back up in the drainage system.

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Mr. Bennett suggested that it would be possible to install a drain at the bottom of the retaining wall which holds up the patio and water from that drain could then be directed into the galleries to the south of the house. Mr. Olvany indicated that it would be a good idea to incorporate such a drainage system into the plans.

Mr. Bennett said that the Fahey property is located below the property at 5 Top O'Hill Road. He said that his client's property at 5 Top O'Hill Road does not generate the additional runoff water that drained down into the Faheys' property during a December storm. He said that the Fahey house is at the bottom of a hill and does not have good drainage systems around it.

Mr. Voigt indicated that the removal of trees and the considerable disturbance at 5 Top O'Hill Road would appear to have contributed to the drainage problems experienced at the Fahey property, in particular, the driveway toward the garage at 5 Top O'Hill Road was supposed to be installed so that drainage in the street would not pass through the property at 5 Top O'Hill Road and then proceed downhill into the Fahey property. Apparently, there was a failure of that design element. Mr. Bennett confirmed that street runoff had run through the site and down to the Fahey property.

Renato Gasparian showed a video of a rain storm of January 24, 2015. It showed storm water runoff in Top O'Hill Road going past the driveway to 5 Top O'Hill Road and therefore not going down into the construction site or toward the Faheys. He submitted a copy of the C.D. for the record. He said that in November there was a 4 inch rain storm that did breach through the driveway and went through the site and then to the Fahey property. He said that the video of January 24th was only a one inch rain storm.

Mr. Bennett said that the proposed flatter lawn area to the south of the house would be a drainage improvement compared to the steep slope that had existed there. In the discussion that followed, it was noted that the removal of trees and ground cover from the slope area might contribute to increasing the amount of runoff.

Mr. Ginsberg said that the revised Drainage Plan does take some of the water from the northwest corner of the site to the new Cultec units to be added to the south of the house.

Mr. Bennett said that he has also revised the plan to include a two foot deep sump in the driveway catch basin. Mr. Olvany asked about requiring a maintenance plan and whether the patios were new or on the original plan. Mr. Gasparian said that the patios are not new to the plan.

Attorney Robert Maslan represented the Faheys who live to the west of 5 Top O'Hill Road. He showed photographs of the former house and driveway and noted that the old driveway ran from the street directly toward the garage and was not aimed at the neighbors. He said that the video which shows only a one-inch rain storm is not very valid because a one-inch storm is not a major storm. He said that the project involves the construction of patios and that patio drains can easily be added to manage the runoff water so that that water is not allowed to flow directly toward his client. He said that many pools and patios and driveways are constructed with drainage systems that do not ice up as Mr. Gasparian claims. He said that the cost of installing a proper drainage on the perimeter would be modest. Attorney Maslan said that the driveway and roof drainage system concentrates the storm water runoff into the northwest corner of the property. Galleries to be installed in that

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area will supersaturate the ground and should be disbursed to comply with the intent of the Drainage Regulations. Attorney Maslan submitted parts of the State and Darien Drainage Manuals.

Rima Laukaitis, a Professional Engineer from Martinez Couch & Associates, said that her clients, the Faheys, were being flooded because the exposed soil and considerable site disturbance at 5 Top O'Hill Road have allowed approximately two acres and about two acres of other land to drain from the street and through the site at 5 Top O'Hill Road and then to the Fahey property. No temporary Storm Drainage Management System was installed or maintained to address this problem. Since the problem occurred in December, the Drainage System has been installed on a temporary basis at 5 Top O'Hill Road. She said that she reviewed the new calculations, but they do not make reference to the Town of Darien's Drainage Manual or requirements. She had several questions about the drainage calculations and the time of concentration that were used. She said that the drainage calculations do not include percolation tests and the locations where the drainage system is to be installed and there has been no clogging factor or overflow factor incorporated into the calculations. She said that the staging of construction has resulted in the compaction of the soils in the vicinity of the cultec units and Mr. Bennett did not use the permeability factor required by the Town Drainage Manual. She also said that the drainage infiltrators are installed on a portion of the property that is a 20% slope. But slopes over 15% grade should not be used for drainage systems unless they are separated from neighboring properties by at least 50 feet or more. She said that the total number of Cultec units should be increased on the site and the drainage should not be concentrated into the northwest corner.

Mr. Bennett said that he revised the calculations and was more careful and more accurate about the assumptions. He said that he has never seen a permeability test done, rather a typical percolation test is done. He said that the percolation rate that they measured was 1 inch in 13 minutes and this was measured on the site and was used in a revised report. He said that the original percolation rate of 1 inch in 20 minutes had been used in the original report.

Kevin Fahey said that his property is downhill from the development which occurring at 5 Top O'Hill Road and now his property has flooded more and frequently than ever before. He said that the containment area of the current drainage system is on a steep slope area that is not adequately drained. He said that he wants the drainage problems to be solved.

Mr. Bennett said that he will revise the Drainage Plan to incorporate a drainage collection system around the patio and will look into ways of directing additional storm water from the roof and maybe a portion of the driveway into a system to the south.

Mr. Gasparian said that previous to this project, there was no drainage system on the property and all the water from the house and the driveway went downhill toward the neighbor. He said that the more drainage system is added to the site, it would be better for the neighbors than the original development.

Mrs. Cameron said that other things that have been noted in the reports are: to clarify the lip on the driveway near the street, to add a sump in the northwest corner of the driveway; to collect water from the patios and stone trenches and direct that water to the south into new galleries; to install a level spreader to spread out the overflow from the south galleries; to try to make more of the roof drain and driveway to drain to the south and to add more Cultecs in that area, if needed. She said

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that the plans are to be revised to incorporate these changes and the Commission will accept the revised plans after the close of the public hearing and will have our professional staff review the revised plans and advise the Commission.

There were no other comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Olvany, seconded by Mr. Sini and unanimously approved.

At about 10:06 P.M., Chairman Cameron read the following agenda item:

Coastal Site Plan Review #284-A, Flood Damage Prevention Application #344, Steven & Maeve Zamsky, 66 Five Mile River Road. Proposing to install footings and steps to a new pier, ramp, and float; and a buried electric line; and perform related site activities within regulated areas. The subject property is located on the east side of Five Mile River Road approximately 900 feet south and east of its intersection with Old Farm Road, and is shown on Assessor's Map #66 as Lot #49 & #13 in the R-1/2 Zone.

Attorney Wilder Gleason represented the applicant and explained that a new fixed pier and float would be installed from the property into the Five Mile River.

Kate Throckmorton was also present and explained that the Connecticut Department of Energy and Environmental Protection approval has been obtained as well as a permit from the Darien Environmental Protection Commission. It was noted that several years ago, the property owner got approval to clean up the site and remove much of the debris that had been in the area.

Mr. Ginsberg noted that the DEEP has not commented on the pending application because they had already sent a letter of approval. There was an issue about the location of the parking of construction vehicles and the need to make sure that there would be safe parking during the construction process.

Steven Zamsky said that construction vehicles will not park on the street because of the dangerous curve in the area. Rather, he will have the construction vehicles park in his driveway (across the street from the proposed pier). He said that it is anticipated that the site work will take a few weeks to implement.

There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Olvany, seconded by Mr. Sini and unanimously approved.

Chairman Cameron read the following agenda item:

Coastal Site Plan Review #110-D, Flood Damage Prevention Application #98-D, Brenda Thompson, 33 Searles Road. Proposal to expand a terrace and move an existing walkway and perform related site development activities within regulated areas. The subject property is located

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on the east side of Searles Road approximately 300 feet south of its intersection with Edgehill Drive, and is shown on Assessor's Map #67 as Lot #48 & #49 in the R-1 Zone.

Mr. DiDonna recused himself from participation on this matter to avoid any perception of a conflict of interest.

Attorney Wilder Gleason represented the applicant and explained that there is slight expansion taking place to the rear of the house near the garage and some of this work is in the Flood Zone and needs approval from the Commission. On the front right portion of the house, a terrace is being expanded and it is within the Flood Zone and on the lagoon side of the structure. Construction details and construction access were discussed. It was noted that there will not be any disturbance near the lagoon. Attorney Gleason explained that stormwater runoff from the structure will be handled as a sheet flow to allow the water to flow over the surface of the land, down the gentle slope to the tidal lagoon to the south of the house.

There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Sini, seconded by Mr. Olvany and unanimously approved.

Mr. DiDonna returned to the meeting room and Chairman Cameron read the following agenda item:

GENERAL MEETING

Discussion, deliberation and possible decision on the following application:

Special Permit Application #277-A/Business Site Plan #248, Day Street Development, LLC, 13 Grove Street. Request for Le Boudoir, a personal service use, for a 1,250+/- square foot portion of the first floor of the building at 13 Grove Street. *PUBLIC HEARING CLOSED: 11/25/2014. DECISION DEADLINE HAS BEEN EXTENDED TO 2/3/2015 BY THE APPLICANT.*

The following motion was made: That the Planning & Zoning Commission waive the process of reading all the draft resolution aloud because each member has had an opportunity to review the draft prior to the meeting. The motion was made by Mr. Voigt, seconded by Mr. Sini and unanimously approved.

Ms. Cameron said that there is a draft motion to deny the proposed hair blow out service at 13 Grove Street. She said the Commission had previously denied the request to have Massage Envy on the ground floor of the other building at 1015 Boston Post Road that shares the same parking lot. The Commission also denied the spa service aspects of the BlueMercury business and only allowed them to have their retail sales facility. She said that the Commission also said that the medical service business proposed at 13 Grove Street was in fact a personal service business that would need a Special Permit. That applicant chose not to pursue the request. She said that the original approval for this building and for the redevelopment of this entire property specifies that the first floor of each of the two buildings will be for retail business only. The second floor of each building will contain three apartments. A retail business would generally not have nearly as many employees as the proposed personal services would and the original approval specified that the employees in the first floor businesses cannot park in the adjacent Grove Street parking lot. She

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said that the Board of Selectmen recently addressed some of the parking rules within the Grove Street parking lot but that information is not part of this record. She said that the applicant's plan for parking does not count upon the use of the Grove Street but it does count heavily on the use of on-street parking spaces. She noted that a personal service business is usually a destination rather than an impulse buy and this type of personal service business is not the same as a typical retail use.

Mr. Ginsberg said that the report from David Sullivan indicates that this personal service business would not create more parking demand than many retail businesses. Mr. Voigt said that retail shoppers tend to park in one location and walk to various stores in the downtown area. While they are doing so, they window shop from business to business. This is contrasted with a destination service business use where the people will not be looking to buy other retail goods. He said that the original proposal was submitted as, and approved for, retail use only on the ground floor. He said he is very reluctant to start to grade the quality of a personal service use versus some other personal service use. He said there is a benefit to sticking with the concept that the ground floor uses will be retail and only retail.

Mr. Olvany said that the Kumon facility located in the same CBD zone does involve dropping off children for an hour or so where they will receive specialized tutoring and learning. He said that it is a personal service. He also noted that BlueMercury has some stools for the application of make-up and Kirby & Company was recently approved for a food service use. He said that the Sugar Bowl use is a restaurant and it is much more intense than the proposed hair blow out facility. Ms. Cameron concurred and noted that the Sugar Bowl use is a pre-existing, non-conformity in that it does not provide any customer parking. Mr. Olvany said that he was in favor of the application, and the proposed use and that this proposed personal service use is not remotely comparable to Massage Envy in its scope, timing or parking demand. Mr. Voigt said that the building owner claims retail uses won't work because there is no Post Road frontage but he is reluctant to get into a sliding scale of service uses that might work due to their time of operation or their number of chairs or other factors. Mr. Sini expressed a similar concern. Ms. Cameron said that if, down the road, the Board of Selectmen change the use and Regulations regarding the use of the Grove Street parking lot or other factors or experience give a different perspective on the situation, then it might be acceptable to have a personal service business use instead of the retail use on the first floor. Mr. DiDonna said that the original approval does not count on using Grove Street parking lot for employees and that the use of the Grove Street lot might change over time, but not now. Mr. Olvany said that if parking is not adequate then the business will not do well. He said that the tenant thinks the parking is adequate and that they will be able to flourish in this location.

Mr. Ginsberg said that Section 905t is different than Section 904 regarding the number of parking spaces that are mandated. He said that the original approval noted that the Grove Street lot is not to be counted on to make this project work. Ms. Cameron said that the Commission had previously approved a large building on Squab Lane to have a first floor retail use and the upper floor has a restaurant. That building has not yet been constructed and it will certainly impact parking in the immediate area. After a brief hiatus, Mr. Ginsberg said that the attorney for the applicant would prefer that the Planning & Zoning Commission not vote on this matter tonight so that she could discuss the situation with her client. The Commission agreed not to take a vote at that time. No motion was made and no action was taken.

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There being no further business, the following motion was made: That the Commission close the meeting. The motion was made by Mr. Sini, seconded by Mr. Voigt and unanimously approved. The meeting was adjourned at 10:51 P.M.

Respectfully submitted,

David J. Keating
Planning & Zoning Assistant Director

01.29.2015min